Mohamad Nasuha bin Abdul Razak v Public Prosecutor

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO W-05(H)-404–09 OF 2017
ZAWAWI SALLEH, AHMADI ASNAWI AND ABDUL KARIM JJCA
15 JANUARY 2019

Criminal Procedure — Appeal — Appeal against sentence — Appellant charged with terrorism related offences under the Penal Code — Appellant pleaded guilty and convicted — Whether sentence imposed upon appellant excessive — Whether sentence imposed reasonable and appropriate — Penal Code ss 130J(1)(a), 130JB(1)(a) & 130N(b)

The appellant was charged before the Kuala Lumpur High Court for four terrorism related offences, ie, under ss 130J(1)(a), 130JB(1)(a) and two charges under s 130N(b) of the Penal Code. Upon receiving information of a man being involved in terrorism activities, a raid was conducted where the appellant was arrested and his mobile phone was seized. Four images from the mobile phone was extracted and the said images were confirmed to be associated with the Islamic State ('IS') that had been designated a terrorist organisation by the United Nations and many individual countries. Further investigation by the police revealed that the appellant had joined a telegram chat group linked to the local militant cell 'Gagak Hitam' (Black Ravers). The appellant had pledged his allegiance to the IS by taking an oath or *bay'ah*. The appellant, upon the direction of the top Malaysian IS militant, had deposited a total sum of RM200 into the account belonging to one Bukhori bin Che Noor. Bukhori was charged and convicted for giving financial services by allowing the deposit and transfer of money from his bank account for the benefit of terrorism. The appellant pleaded guilty to all the four charges and was duly convicted. The learned judicial commissioner sentenced the appellant to: (a) 13 years imprisonment for the first charge; (b) four years imprisonment for the second charge; (c) ten years imprisonment for the third charge; and (d) ten years imprisonment for the fourth charge. The sentences were to run concurrently from the date of the arrest. Being aggrieved by the said sentences, the appellant appealed to this court urging the reduction of the same.

Held, allowing the appeal in part:

(1) The appellant's action had crossed the line between the legitimate expression of his own views and the criminal act of inviting support for an organisation which was at the material time engaged in appalling acts of terrorism. However, the evidence did not show specific link between the pledge and any acts of violence. Therefore, the imprisonment term

imposed was excessive in light of the circumstances of the case. Consequently, the appellant's appeal was allowed in respect of the first charge, and substituted it with ten years imprisonment (see paras 25–26).

(2) There was no evidence to show that the photographs were part of a planned attack. The evidence only showed that the appellant was motivated by their ideology and was preparing to follow them. For the foregoing reasons, the sentence imposed in respect of the second charge was reasonable and appropriate in the circumstances of the case (see para 28).

(3) This was not a case of a vulnerable young person being lured or beguiled into criminal misconduct in which he was not inclined to participate. The appellant was a willing participant and took steps to provide support to the group. On the foregoing reasons, there was no cogent reason to disturb the imprisonment sentence of ten years imposed on the appellant in respect of for the third and fourth charges (see paras 30–31).

[Bahasa Malaysia summary

Perayu didakwa di Mahkamah Tinggi Kuala Lumpur atas empat kesalahan berkaitan keganasan, iaitu, di bawah ss 130J(1)(a), 130JB(1)(a) dan dua pertuduhan di bawah s 130N(b) Kanun Keseksaan. Apabila menerima maklumat seorang lelaki yang terlibat dalam kegiatan keganasan, serbuan dijalankan di mana perayu ditangkap dan telefon bimbitnya dirampas. Empat imej dari telefon bimbit itu diekstrak dan imej-imej tersebut disahkan dikaitkan dengan Islamic State ('IS') yang telah ditetapkan sebagai organisasi pengganas oleh Bangsa-Bangsa Bersatu dan banyak negara. Siasatan lanjut oleh pihak polis mendedahkan bahawa perayu telah menyertai kumpulan perbualan telegram yang dikaitkan dengan sel militan tempatan 'Gagak Hitam' (Black Ravers). Perayu telah berikrar kepada IS dengan mengambil sumpah atau *bay'ah*. Perayu, atas arahan anggota militan tertinggi Malaysia, telah mendepositkan sejumlah RM200 ke dalam akaun milik seorang Bukhori bin Che Noor. Bukhori didakwa dan disabitkan kesalahan kerana memberikan perkhidmatan kewangan dengan membenarkan deposit dan pemindahan wang dari akaun banknya untuk manfaat keganasan. Perayu mengaku bersalah terhadap kesemua empat pertuduhan dan disabitkan. Pesuruhjaya kehakiman yang bijaksana menjatuhkan hukuman kepada perayu dengan: (a) 13 tahun penjara untuk pertuduhan pertama; (b) empat tahun penjara untuk pertuduhan kedua; (c) sepuluh tahun penjara untuk pertuduhan ketiga; dan (d) sepuluh tahun penjara untuk pertuduhan keempat. Hukuman ini akan dijalankan serentak dari tarikh penangkapan. Terkilan dengan hukuman tersebut, perayu merayu kepada mahkamah ini untuk menggesa pengurangan hukuman.

Diputuskan, membenarkan sebahagian daripada rayuan:

(1) Tindakan perayu telah melintasi garisan antara ekspresi sah pandangannya sendiri dan tindakan jenayah mengundang sokongan untuk organisasi yang pada masa yang material terlibat dalam tindakan keganasan. Walau bagaimanapun, keterangan tidak menunjukkan hubungan khusus antara ikrar dan apa-apa tindakan keganasan. Oleh itu, tempoh penjara yang dikenakan adalah berlebihan berdasarkan keadaan kes tersebut. Oleh itu, rayuan perayu dibenarkan berkenaan dengan pertuduhan pertama, dan menggantikannya dengan sepuluh tahun penjara (lihat perenggan 25–26).

(2) Tiada keterangan untuk menunjukkan bahawa gambar itu adalah sebahagian daripada serangan yang dirancang. Keterangan hanya menunjukkan bahawa perayu dimotivasi oleh ideologi mereka dan sedang bersedia untuk mengikutinya. Atas sebab-sebab tersebut, hukuman yang dikenakan berkenaan dengan pertuduhan kedua adalah munasabah dan wajar dalam keadaan kes itu (lihat perenggan 28).

(3) Ini bukanlah kes orang muda yang terdedah yang ditangkap atau dipujuk ke salah laku jenayah di mana dia tidak cenderung untuk mengambil bahagian. Perayu adalah peserta yang bersedia dan mengambil langkah untuk memberi sokongan kepada kumpulan. Atas sebab-sebab tersebut, tidak ada sebab untuk mengganggu hukuman penjara sepuluh tahun yang dikenakan ke atas perayu berkenaan dengan pertuduhan ketiga dan keempat (lihat perenggan 30–31).]

Cases referred to

Her Majesty the Queen v Khawaja [2010] 103 OR (3d) 321; (2010) ONCA 862, CA (refd)

Hoare v R (1989) 167 CLR 348, CA (refd)

Pendakwa Raya lwn Anuar bin AB Rawi [2016] MLJU 533; [2016] 1 LNS 946, HC (refd)

Pendakwa Raya lwn Azizi bin Abdullah [2017] MLJU 649; [2017] 1 LNS 562, HC (refd)

Pendakwa Raya lwn Imam Wahyudin bin Karjono dan satu lagi dan kes-kes lain [2017] 10 MLJ 582; [2017] 1 LNS 691, HC (refd)

Pendakwa Raya lwn Muamar Gadaffi bin Mohamad Shafawi [2017] MLJU 483; [2017] 1 LNS 516, HC (refd)

Pendakwa Raya lwn Muhammad Hakimin bin Azman [2017] MLJU 1024; [2017] 1 LNS 1017, HC (refd)

Pendakwa Raya lwn Tengku Shukri bin Che Engku Hashim [2018] 8 MLJ 645, HC (refd)

Pendakwa Raya lwn Wan Mohamad Nur Firdaus bin Abd Wahab [2017] MLJU 1793, HC (refd)

Pendakwa Raya v Mohd Haniffa Bin Syedul Abbar [2016] MLJU 1270; [2016] 1 LNS 1654, HC (refd)

Pendakwa Raya v Muhammad Sani Mahdi Bin Sahar [2016] MLJU 1106; [2016] 1 LNS 1150, CA (refd)
PP v Bukhori bin Che Noor 45SO-40–12 of 2016 (unreported) (refd)
PP v Bukhori bin Che Noor Criminal Case No 45S0–40–03 of 2017 (unreported) (refd)
PP v Kadir bin Uyung & Anor and another appeal [2017] MLJU 1692; [2017] 1 LNS 1403, CA (refd)
PP v Mohamed Danny bin Mohamed Jedi [2018] 6 MLJ 383; [2018] 5 CLJ 692, CA (refd)
PP v Muhammad Kasyfullah bin Kassim [2016] 6 MLJ 567; [2017] 1 CLJ 63, CA (refd)
PP v Rohaimi Abd Rahim & Anor Criminal Appeal No W-05(H)-83–02 of 2016 (unreported) (refd)
PP v Roshelmyzan bin Husain 45SO-33–12 of 2016 (unreported) (refd)
PP v Zairosfitri bin Jainudin Azhar 45SO-26–11 of 2016 (unreported) (refd)
Siti Noor Aishah bt Atam lwn Pendakwa Raya [2018] 6 MLJ 614; [2018] 5 CLJ 44, CA (refd)

Legislation referred to

Penal Code Chapter VIA

Appeal from: Criminal Trial No 45SO-70–04 of 2017 (High Court, Kuala Lumpur)

Mohamad Nasuha bin Abdul Razak, representing himself.
Dhiya Syazwani Izyan bt Mohd Akhir (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Zawawi Salleh JCA (delivering judgment of the court):

INTRODUCTION

[1] The appellant was charged before the Kuala Lumpur High Court for four terrorism related offences. The charges read as follows:

First Charge

> Bahawa kamu pada 30 Mac 2016 jam lebih kurang 8.37 pagi, di Lot 3030, Kampung Sungai Tembak, Parit Panjang, dalam daerah Baling, dalam negeri Kedah, dengan pengetahuan telah memberi sokongan dengan cara berbai'ah kepada kumpulan pengganas Islamic State menggunakan nama 'Abu Nazrin' dalam kumpulan aplikasi Telegram 'gagak hitam' dengan menggunakan nombor telefon 011-24335218 seperti di lampiran; dan oleh yang demikian kamu telah melakukan suatu kesalahan di bawah perenggan 130J(1)(a) Kanun Keseksaan [Akta 574] yang boleh dihukum di bawah subseksyen 130J(1) Kanun yang sama.

Second Charge

Bahawa kamu pada 30 Mac 2016 jam lebih kurang 8.37 pagi, di Lot 3030, Kampung Sungai Tembak, Parit Panjang, dalam daerah Baling, dalam negeri Kedah, telah ada dalam milikan kamu empat (4) keping gambar di dalam telefon bimbit jenis IPhone 5s (Nombor IMEI: 013986000816301) yang merupakan item berkaitan dengan kumpulan pengganas Islamic State (IS),dan dengan itu kamu telah melakukan suatu kesalahan di bawah perenggan 130JB(1)(a) Kanun Keseksaan [Akta 574] yang boleh dihukum di bawah subseksyen 130JB(1) Kanun yang sama.

Third Charge

Bahawa kamu pada 4 Mei 2016 jam lebih kurang 5.01 petang, di CDM Maybank Petronas, Kuala Ketil, dalam daerah Baling, dalam negeri Kedah, telah secara tidak langsung memberikan wang sebanyak RM100 kepada Bukhori bin Che Noor melalui akaun Maybank bernombor 157166-894675, yang mana kamu mempunyai sebab yang munasabah untuk mempercayai bahawa harta itu akan digunakan, secara keseluruhan atau sebahagian, untuk melakukan perbuatan pengganas, dan oleh yang demikian kamu telah melakukan satu kesalahan di bawah subseksyen 130N(b) Kanun Keseksaan [Akta 574] dan boleh dihukum di bawah peruntukan yang sama.

Fourth Charge

Bahawa kamu pada 29 Jun 2016 jam lebih kurang 1.02 petang, di CDM Maybank Baling 2, dalam daerah Baling, dalam negeri Kedah, telah secara tidak langsung memberikan wang sebanyak RM100 kepada Bukhori bin Che Noor melalui akaun Maybank bernombor 157166-894675, yang mana kamu mempunyai sebab yang munasabah untuk mempercayai bahawa harta itu akan digunakan, secara keseluruhan atau sebahagian, untuk melakukan perbuatan pengganas, dan oleh yang demikian kamu telah melakukan satu kesalahan di bawah subseksyen 130N(b) Kanun Keseksaan [Akta 574] dan boleh dihukum di bawah peruntukan yang sama.

[2] The appellant pleaded guilty to all the four charges and was duly convicted. After having considered the written and oral submissions by the parties, the learned judicial commissioner ('JC') sentenced the appellant as follows:

(a) first charge: 13 years imprisonment;

(b) second charge: four years imprisonment;

(c) third charge: ten years imprisonment;

(d) fourth charge: ten years imprisonment; and

(e) the sentences to run concurrently from the date of arrest, 28 September 2016.

[3] Being aggrieved by the said sentences, the appellant appealed to this court urging the reduction of the same.

[4] We have heard the appellant himself and learned deputy public prosecutor ('DPP') at some length. We have also perused the written submissions carefully and gone through the record of appeal in its entirety. For the reasons that follow, we found that there is merit in this appeal in respect of the first charge. We, accordingly, allowed the appeal and set aside the sentence of 13 years imprisonment imposed by the High Court and substituted it with an imprisonment term of ten years with effect from the date of arrest on 28 September 2016. We affirmed the sentences imposed by the High Court in respect of the second, third and fourth charges.

THE FACTUAL BACKGROUND

[5] The police had received information of a man being involved in terrorism activities. On 28 September 2016, Inspector Mohd Fahmi bin Mohamad Termizi led a raiding party to premises at Lot 3030, Kampung Sg Tembak, Parit Panjang, Baling, Kedah. The appellant was arrested and his mobile phone was seized. Inspector Nur Zahirah bt Mustapha, a computer forensics investigator, extracted four images from the mobile phone. Professor Rohan Kumar Gunaratna, an academic researcher on terrorist groups, analysed the said images and confirmed that they are associated with the Islamic State ('IS'). IS has been designated a terrorist organisation by the United Nations and many individual countries. The United Nations holds IS responsible for human right abuses and war crimes. IS also committed ethnic cleansing on historic scale in Northern Iraq (see *Ethnic cleansing on a historic scale: The Islamic State's systematic targeting of minorities in northern Iraq*, Amnesty International, 2 September 2014).

[6] Further investigation by the police revealed that the appellant, using the alias 'Mohd Nasuha di', had joined a telegram chat group linked to the local militant cell 'Gagak Hitam' (Black Ravers), helmed by IS militant Muhammad Wanndy Mohd Jedi, the top Malaysian IS operative in Syria. On 30 March 2016, at about 8.37am, the appellant had pledged his allegiance to the IS by taking an oath or *bay'ah* as follows:

> Saya Abu Nazrin bersumpah demi Allah tidak akan berkhianat kepada ikhwah anshar daulah islamiyah dimanapun berada, siap menerima azab dari Allah, dan tidak diterima bumi bila saya berkhianat dan saya memberikan informasi penting kepada thaghut berupa identitas, strategi, maupun pergerakan yang sekecil-kecilnya dari perjuangan ini atau apapun yang dapat membahayakan keselamatan anshar daulah lainnya. Bila saya tertangkap atau terancam dibunuh, saya tidak akan memberikan informasi apapun kepada musuh-musuh Allah. Inilah sumpah saya atas nama Allah SWT, semoga Allah melindungi saya lahir & batin, dunia & akhirat. Aaamiin Ya Rabal Alamin ...

[7] Ahmad El-Muhammady bin Muhammad Uthman El-Muhammady, a lecturer and researcher from the International Islamic University Malaysia (IIUM), had analysed the said allegiance and confirmed that the oath signifies these:

> *Bay'ah* merupakan sumpah yang dilakukan oleh seseorang untuk memberi kesetiaan dan ketaatan kepada ketua (*amir*) dan kumpulan. *Bay'ah* merupakan satu upacara penting bagi seorang pengikut untuk menyertai sesuatu kumpulan. Apabila seseorang itu memberikan bay'ah atau sumpah taat setia kepada seseorang atau kumpulan, maka implikasinya seperti berikut:
>
> i. Seseorang menjadi ahli bagi kumpulan itu secara rasmi;
>
> ii. Ahli bersedia memberi kesetiaan (*wala*') yang mutlak kepada ketua atau kumpulan;
>
> iii. Bila diberi arahan oleh ketua atau kumpulan, ahli wajib taat atau wajib patuh pada arahan tanpa ragu-ragu (*al-taáh*);
>
> iv. Sekiranya ahli tidak akur atau melanggar *bay'ah*, akan gugur keahlian, dianggap durhaka kepada ketua (*amir*), wajib dihukum. Hukuman ini dilaksanakan oleh kumpulan atau sumpah untuk mendapat hukuman dari Allah di dunia dan akhirat; dan
>
> v. Sekiranya dia melanggar sumpah (*bay'ah*), dia akan mendapat balasan di dunia dan di akhirat.

[8] On 2 May 2016, Muhammad Wanndy Mohd Jedi or 'Akhi Wanndy' had directed members of the chat group to channel funds to help the IS fighters such as Fudhail Omar and himself. On 4 May 2016 and 29 June 2016, the appellant had deposited a total sum of RM200 into the Maybank account belonging to one Bukhori bin Che Noor. Bukhori was charged and convicted for giving financial services by allowing the deposit and transfer of money from his bank account for the benefit of terrorism (see *Public Prosecutor v Bukhori bin Che Noor* Criminal Case No 45S0–40–03 of 2017 (unreported)).

FINDINGS OF THE HIGH COURT

[9] The appellant, in his mitigation, other than narrating his family background such as aged parents, six children and that the youngest is suffering from pneumonia, informed the court that he was influenced to commit the offences by the social media. He was remorseful and promised not to commit the like offences in future.

[10] Learned DPP in his written submission contended that the severity of the offences and the aggravating factors point towards a strong public interest in imposing custodial sentence.

[11] In imposing the sentences as he did, the learned JC reasoned as follows:

> [12] Kesalahan di bawah s 130J(1)(a) KK membawa hukuman penjara seumur hidup atau pemenjaraan selama tempoh tidak lebih tiga puluh tahun atau denda. Sementara hukuman di bawah s 130JB(1)(a) KK memperuntukkan hukuman penjara bagi tempoh yang tidak lebih tujuh tahun atau dengan denda. Manakala s 130N(b) KK memperuntukkan hukuman penjara tidak kurang dari tujuh tahun tetapi tidak melebihi tiga puluh tahun dan hendaklah juga dikenakan denda. Daripada peruntukan penalti ini merujuk akan serius kesalahan sebegini. Kesalahan yang dilakukan oleh Tertuduh adalah melibatkan diri dengan memberi taat setia kepada kumpulan pengganas dan memberi sokongan serta membantu pergerakan pengganas. Walaupun ia tidak secara langsung melakukan keganasan tetapi perbuatan Tertuduh ini menggalak dan menyuburkan pergerakan kumpulan pengganas dan perbuatan pengganas. Islamic State merupakan kumpulan yang telah diisytiharkan sebagai kumpulan pengganas. Justeru itu kesalahan ss 130J, 130JB dan 130N KK diperkenalkan bagi tujuan menangani berlaku kes-kes keganasan oleh kumpulan pengganas dan seterusnya menghindarkan dari ia menjadi satu ancaman. Malah memasukkan kesalahan-kesalahan ini dalam Undang-undang Keselamatan (SOSMA 2012) adalah bagi maksud menangani kes-kes keganasan yang telah menjadi satu ancaman yang bersifat global itu. ...
>
> [13] Dengan itu Mahkamah harus mempertimbangkan kepentingan awam ini melebihi dari kepentingan Tertuduh. Dari tren-tren penghukuman yang diputuskan dalam Mahkamah Tinggi Kuala Lumpur dan kes 45SO-67–04 Tahun 2017, 45SO-[3&7]-01 Tahun 2017, 45SO-109–05 Tahun2017 bagi kesalahan di bawah s 130JB(1)(a) KK hukuman penjara di antara 2–5 tahun dan dalam kes 45SO-1–1 Tahun 2017, 45SO-40–3 Tahun 2017 dan 45SO-36–03 Tahun 2017 melibatkan kesalahan di bawah s 130J(1)(a) KK hukuman penjara antara 7–10 tahun. Tren-tren ini menunjukkan seriusnya kesalahan-kesalahan ini.
>
> [14] Mahkamah ini juga mempertimbangkan faktor-faktor mitigasi tertuduh terutamanya mengenai kesanggupan Tertuduh mengaku salah akan kesalahan dan akan rekod bersih Tertuduh. Namun setelah menimbangkan seriusnya kesalahan yang dilakukan dan kepentingan awam, Mahkamah seharusnya memperakui satu hukuman yang berbentuk deterren dan pengajaran. ...

OUR FINDINGS

[12] It is universally acknowledged that terrorism is a distinct category of criminal activity. It has no equal because the commission of such criminal activity would extend beyond an individual act of violence for a personal reason, such as revenge or financial gain. It has the potential and in many cases, are intended to endanger large sections of the community and cause mass loss of life. As the Ontario Court of Appeal stated in *Her Majesty the Queen v Khawaja* [2010] 103 OR (3d) 321; (2010) ONCA 862 at para [231]:

> To be sure, terrorism is a crime unto itself. It has no equal. It does not stop at, nor is it limited to, the senseless destruction of people and property. It is far more insidious in that it attacks our very way of life and seeks to destroy the fundamental

values to which we ascribe — values that form the essence of our constitutional democracy. A

[13] These unique features have been recognised by the Malaysian courts. The courts viewed the terrorism-related offences as serious crimes and had imposed deferent sentences on the perpetrators of such crimes (see *Public Prosecutor v Muhammad Kasyfullah bin Kassim* [2016] 6 MLJ 567; [2017] 1 CLJ 63, *Pendakwa Raya lwn Muamar Gadaffi bin Mohamad Shafawi* [2017] MLJU 483; [2017] 1 LNS 516, *Public Prosecutor v Rohaimi Abd Rahim & Anor* Criminal Appeal No W-05(H)-83–02 of 2016 (unreported), *Public Prosecutor v Kadir bin Uyung & Anor and another appeal* [2017] MLJU 1692; [2017] 1 LNS 1403, *Public Prosecutor v Mohamed Danny bin Mohamed Jedi* [2018] 6 MLJ 383; [2018] 5 CLJ 692). B C

[14] Be that as it may, one of the important factors that we must bear in mind is that the sentence must always satisfy the principle of proportionality — that the severity of the penalty should be proportionate to the gravity of the offence committed and the degree of responsibility of the offender. The principle was articulated by the High Court of Australia in *Hoare v R* (1989) 167 CLR 348 at p 354 as follows: D E

> a sentence of imprisonment imposed by a court should never exceed that which can be justified as appropriate or proportionate to the gravity of the crime considered in the light of its objective circumstances.

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[15] Terrorism related offences under Chapter VIA of the Penal Code cover a broad spectrum of offenders. There are instances where people are merely followers, acolytes or assistants, people who have sympathies for the activities of the organisation, or who are willing to have organisation benefit from fundraising efforts. These offences no doubt, are serious in nature. Nonetheless, they should not be treated on equal footing with other heinous acts of terrorism. G

[16] The Malaysian superior courts have not come up with clear guidelines on sentencing in respect of these types of offences. H

[17] In the absence of definitive guidelines from our courts, it is perhaps useful to make reference to the 'Definitive Guideline to Terrorism Offences' ('Guideline') published by the British Sentencing Council. They cover a wide range of terrorism offences including the preparation of terrorist attacks, causing or attempting to cause an explosion, collecting or sharing extremist material, raising funds for terrorism, glorifying terrorist attacks, failing to disclose information about terrorist acts and joining or supporting a banned organisation. I

[18] According to the Guideline, the levels of criminality are differentiated by: (a) culpability; and (b) harm. Briefly, depending on the level of the role the offender played, for example, whether the offender played a leading role in a group activity, he or she could be classified in the category of 'High Culpability'. If the role is lesser, the offender is classified in lower levels of culpability such as 'Medium Culpability' and 'Lower Culpability' with the sentence range diminishing as the level of culpability is reduced. The courts must also consider the harm associated with the underlying offence to determine whether it warrants heavier sentence in appropriate cases. The detail characteristics are reproduced as follows:

	Culpability demonstrated by one or more of the following
A	Offender in position of trust, authority or influence and abuses their position. Persistent efforts to gain widespread or significant support for organisation. Encourages activities intended to cause endangerment to life.
B	Arranged or played a significant part in the arrangement of a meeting/ event aimed at gaining significant support for organisation. Intended to gain widespread or significant support for organisation. Encourages activities intended to cause widespread serious damage to property, or economic interests or substantial impact upon civic infrastructure.
C	Lesser cases where characteristics for categories A and B are not present.

	Harm The court should consider the factors set out below to determine the level of harm
1	Evidence that others have acted on or been assisted by the encouragement to carry out activities endangering life. Significant support for the organisation gained or likely to be gained.
2	Evidence that others have acted on or been assisted by the encouragement to carry out activities not endangering life.
3	All other cases.

[19] In our view, the definitive guideline, though not binding upon our courts, is very useful because it affords the sentencing judge a greater certainty as to the likely sentence that will be imposed within the defined parameters of the factual and evidential matrix of the case.

FIRST CHARGE

[20] Reverting back to the present appeal, the appellant had participated in ba'yah, a ritual in which he swore an oath of allegiance to the IS, promising obedience to the leader of the terrorist group. The oath reflects an agreement and intention to follow directions. The appellant's action of signing on to the IS roster of loyalists shows his strong commitment to aid the IS — professing radical beliefs or joining the radical organisation.

[21] Submissions have been made about the appellant's personal problems. In our considered view, it carries a little weight. No doubt the appellant is responsible in caring his family, and his absence will be difficult to his family, but we must say that the appellant is the author of his own misfortune.

[22] Learned DPP had helpfully brought to our attention the following decisions, in which the accused had been sentenced for the same offences:

(a) *Public Prosecutor v Zairosfitri bin Jainudin Azhar* 45SO-26–11 of 2016 (unreported):

The accused pleaded guilty to one count of terrorism related offences ie supporting the Islamic State ('IS') by taking an oath of allegiance or *bai'ah*. He was sentenced to *five years imprisonment*, with effect from the date of arrest;

(b) *Public Prosecutor v Roshelmyzan bin Husain* 45SO-33–12 of 2016 (unreported):

The accused pleaded guilty to two counts of terrorism related offences ie supporting the Islamic State ('IS') by taking an oath of allegiance or *bai'ah* and having in his possession items related to IS. He was sentenced to *four years imprisonment* for the first charge and two years imprisonment for the second charge;

(c) *Pendakwa Raya lwn Imam Wahyudin bin Karjono dan satu lagi dan kes-kes lain* [2017] 10 MLJ 582; [2017] 1 LNS 691:

Both accused pleaded guilty to two counts of terrorism related offences ie supporting the Islamic State ('IS') by taking an oath of allegiance or *bai'ah* and hurling of a grenade at the Movida club which injured eight people. They were each sentenced to *ten years imprisonment* for the first charge and 25 years imprisonment for the second charge;

(d) *Public Prosecutor v Bukhori bin Che Noor* 45SO-40–12 of 2016

(unreported):

The accused pleaded guilty to two counts of terrorism related offences ie supporting the Islamic State ('IS') by taking an oath of allegiance or *bai'ah* and allowing the use of his personal bank account for the benefit of the IS. He was sentenced to *seven years imprisonment* for each charge;

(e) *Pendakwa Raya lwn Wan Mohamad Nur Firdaus bin Abd Wahab* [2017] MLJU 1793:

The accused pleaded guilty to two counts of terrorism related offences ie supporting the Islamic State ('IS') by taking an oath of allegiance and having in his possession items related to IS. He was sentenced to *eight years imprisonment* for the first charge and five years imprisonment for the second charge; and

(f) *Pendakwa Raya lwn Tengku Shukri bin Che Engku Hashim* [2018] 8 MLJ 645:

The accused pleaded guilty on two counts of terrorism related offences ie supporting the Islamic State ('IS') by taking an oath of allegiance or *bai'ah* and supporting the use of explosives. He was sentenced to *eight years imprisonment* for the first charge and three years imprisonment for the second charge.

[23] We have examined the sentences imposed by the courts in the above cases. The sentence in each of those cases is 'fact-specific' or 'individualisation of punishment', which requires proper consideration of the individual circumstances of each accused person.

[24] In the present appeal, we recognised that the appellant was not involved directly in any particular violent action. However, there is no doubt that the offences committed by the appellant are serious in nature. The action of pledging an oath of allegiance constitutes passive support to the terrorist group. Passive support may be seemingly harmless but it is an intractable problem than open support for terrorism. A terrorist group which has the passive support of many of its followers will be stronger and more determined. Passive support often allows a group to raise funds, acquire arms, plan operations, and enjoy a respite from the counter-attacks of the government it opposes.

[25] Therefore, it is our considered view, that the appellant's action had crossed the line between the legitimate expression of his own views and the criminal act of inviting support for an organisation which was at the material time engaged in appalling acts of terrorism.

[26] As we have alluded to earlier, the evidence in this case did not show specific link between the pledge and any acts of violence. Therefore, with respect, we found that the imprisonment term imposed by the High Court is

excessive in light of the circumstances of the case. Consequently, we are mindful to allow the appellant's appeal in respect of the first charge, and substituted it with ten years imprisonment.

SECOND CHARGE

[27] In considering whether the sentence imposed upon the appellant in respect of the second charge is excessive or otherwise, we have examined the following decisions, in which the accused had been sentenced for the same offence:

(a) *Pendakwa Raya v Muhammad Sani Mahdi Bin Sahar* [2016] MLJU 1106; [2016] 1 LNS 1150:

The accused pleaded guilty to an offence of having in his possession 39 terrorism video recordings. He was sentenced to *18 months imprisonment*, with effect from the date of arrest;

(b) *Pendakwa Raya v Mohd Haniffa Bin Syedul Abbar* [2016] MLJU 1270; [2016] 1 LNS 1654:

The accused pleaded guilty to two counts of terrorism related offences ie dealing with terrorist properties and having in his possession 17 photographs relateing to the IS. He was sentenced to ten years imprisonment for the first charge and *two years imprisonment* for the second charge, with effect from the date of arrest. Sentences to run consecutively;

(c) *Pendakwa Raya lwn Anuar bin AB Rawi* [2016] MLJU 533; [2016] 1 LNS 946:

The accused pleaded guilty to an offence of having in his possession seven photographs and a book relating to the IS. He was sentenced to *two years imprisonment*, with effect from the date of arrest;

(d) *Pendakwa Raya lwn Azizi bin Abdullah* [2017] MLJU 649; [2017] 1 LNS 562:

The accused pleaded guilty to three counts of terrorism related offences ie:

(i) supporting the commission of terrorist acts , involving the use of explosive material, (ii) having in his possession an IS flag; and

(ii) having in his possession IS related photographs and video recordings.

He was sentenced to 13 years imprisonment for the first charge and *four years imprisonment* each for the second and third charge, with effect from the date of arrest. Sentences to run concurrently;

(e) *Pendakwa Raya lwn Muhammad Hakimin bin Azman* [2017] MLJU 1024; [2017] 1 LNS 1017:

The accused pleaded guilty to one count of terrorism related offence ie having in his possession seven IS related photographs. He was sentenced to *one year imprisonment*, with effect from the date of arrest; and

(f) *Siti Noor Aishah bt Atam lwn Pendakwa Raya* [2018] 6 MLJ 614; [2018] 5 CLJ 44:

The accused was tried for having in her possession 12 books related to the movement and acts of the IS. The Court of Appeal allowed her appeal and reduced the sentence from five years imprisonment to *three years imprisonment*, with effect from the date of arrest.

[28] In the present appeal, the appellant had downloaded extremist materials and gathered them in his mobile phone. The photographs were a collection of violent images, designed to incite people in pursuit of violent *jihad*. These items are related to terrorist group which could threaten national security and public order. We accept that there is no evidence to show that these photographs were part of a planned attack. The evidence only shows that the appellant was motivated by their ideology and was preparing to follow them. For the foregoing reasons, we found that the sentence imposed by the High Court was reasonable and appropriate in the circumstances of the case. We, therefore, affirmed the imprisonment term of four years imposed in respect of the second charge.

THIRD AND FOURTH CHARGES

[29] The appellant had deposited small amount of money at ATMs at different locations over a period of time. It showed that the appellant had followed a systematic plan and executed it meticulously and discreetly, to avoid scrutiny and to prevent potential detection.

[30] Although the amount involved is not large, but every penny is a contribution to serious harm. Much havoc can be wreaked with inexpensive items. The cost of a terrorist attack can be modest, but the cost to society is far greater. The fundraising depends on people like the respondent who are prepared to facilitate the transactions to and from his bank account which benefited the Syria-based militants Fudhail Omar and Muhammad Wanndy. The appellant was aware that the money that he wired would go to the terrorist group. This is not a case of a vulnerable young person being lured or beguiled into criminal misconduct in which he was not inclined to participate. The appellant was a willing participant and took steps to provide support to the group.

[31] On the foregoing reasons, we found that there is no cogent reason for us to disturb the imprisonment sentence of ten years imposed on the appellant in respect of for the third and fourth charges.

CONCLUSION

[32] Whilst we acknowledged that the appellant had no direct involvement with the terrorist group, his actions, however, have a risk of enhancing the abilities of the group. We, therefore, are firmly of the view that the severity of the offences herein outweigh the appellant's plea of guilty.

[33] We found that there are no sufficient justification to disturb the sentences imposed on the appellant for the second, third and fourth charges. However, we found that 13 years of imprisonment imposed in respect of the first charge was manifestly excessive. We, therefore, allowed the appellant's appeal only in respect of the first charge. We, accordingly, set aside the sentence imposed by the High Court in respect of the first charge and substituted it with an imprisonment term of ten years with effect from the date of arrest. So ordered.

Appeal allowed in part.

Reported by Nabilah Syahida Abdullah Salleh